

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUE

The issue is whether appellant has met her burden of proof to establish a right upper extremity injury causally related to the accepted March 27, 2017 employment incident.

FACTUAL HISTORY

On March 28, 2017 appellant, then a 55-year-old cook, filed a traumatic injury claim (Form CA-1) alleging that, on March 27, 2017, she injured her right shoulder when pulling a pizza from an oven. She noted that, under a prior claim, OWCP had accepted a January 31, 2013 right shoulder and supraspinatus sprain with arthroscopic repair.⁴ Appellant stopped work on March 27, 2017.

In a letter dated March 27, 2017, the employing establishment disagreed with appellant's assertions.

Appellant submitted unsigned chart notes dated March 27, 2017, a duty status report (Form CA-17) dated March 27, 2017 with an illegible signature, and March 28 and 30, 2017 duty status reports signed solely by a nurse practitioner.

By development letter dated April 5, 2017, OWCP informed appellant that she had not submitted sufficient factual or medical evidence to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the information.

In response, appellant provided an April 22, 2017 statement in which she noted a previous 2014 right shoulder injury with surgical intervention. She recounted that on March 27, 2017 she experienced the sudden onset of strong, sharp right shoulder pain while removing a pizza tray from an oven. Appellant returned to light-duty work on approximately April 4, 2017.

OWCP also received an April 7, 2017 statement, she alleged that, while on light duty, she had sustained a new right shoulder injury in the performance of duty when she lifted a case of nutritional supplement.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the July 12, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

⁴ The present claim was assigned OWCP File No. xxxxxx491. Under OWCP File No. xxxxxx696, OWCP accepted that appellant had sustained a sprain of the right shoulder, upper arm, and supraspinatus while in the performance of duty on January 31, 2013. The claims have not been administratively combined.

In a duty status report (Form CA-17) dated March 22, 2017, Dr. David M. Frank, a Board-certified internist and gastroenterologist, diagnosed right shoulder tenderness with limited motion.

In a March 27, 2017 report, Dr. Frank noted appellant's history of a January 31, 2013 occupational right shoulder injury and September 2013 rotator cuff repair, subacromial decompression, acromioplasty, and long head biceps tenotomy. He also noted that earlier on March 27, 2017, appellant experienced right shoulder pain with radiation to the right elbow when she had removed a pizza from an oven while at work. Dr. Frank obtained x-rays which demonstrated degenerative changes of the acromioclavicular joint. He diagnosed right shoulder pain.

In a report dated March 30, 2017, Dr. Barbara Joyce Freeman, a Board-certified orthopedic surgeon, diagnosed improved adhesive capsulitis. She performed a corticosteroid injection to the right shoulder and restricted appellant to light duty.

An April 10, 2017 magnetic resonance imaging (MRI) scan of the right shoulder demonstrated postsurgical defects, bone marrow edema, and a partial tear of the distal supraspinatus tendon.

In an April 20, 2017 report, Dr. Freeman diagnosed improved adhesive capsulitis of the right shoulder and administered a steroid injection.

By decision dated May 15, 2017, OWCP accepted that the March 27, 2017 employment incident occurred as alleged. However, it denied the claim finding that the medical evidence of record was insufficient to establish causal relationship, as appellant's physicians had not explained how her diagnosed conditions were causally related to the accepted employment incident.

On April 13, 2018 appellant, through counsel, requested reconsideration and submitted a report dated May 11, 2017 by Dr. Timur Hanan, a Board-certified physiatrist. Dr. Hanan noted that appellant had undergone rotator cuff repair in 2013, but had normal function of the right shoulder prior to the accepted March 27, 2017 employment incident. On examination, he observed tenderness and limited range of motion of both shoulders, with weakness in the right shoulder. Dr. Hanan diagnosed bilateral shoulder derangement. He opined that if the history presented by appellant was correct, within a reasonable degree of medical certainty, the diagnosed injuries were causally related to the March 27, 2017 employment incident, "which was the competent producing cause of her current pathology."

Appellant also submitted physical therapy treatment notes dated from May 11 to 23, 2017.

By decision dated July 12, 2018, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable

time limitation period of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁸ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁹ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.¹⁰

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the accepted employment incident.¹² The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the employee.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right upper extremity injury causally related to the accepted March 27, 2017 employment incident.

⁵ *C.B.*, Docket No. 18-0071 (issued May 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (issued 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *C.B.*, *supra* note 5; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *C.B.*, *supra* note 5; *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *C.B.*, *supra* note 5; *Y.J.*, Docket No. 18-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-156 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

¹² *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

¹³ *C.B.*, *supra* note 5; *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Appellant submitted a series of reports from Dr. Frank noting the January 2013 right shoulder injury and March 27, 2017 employment incident. He diagnosed right shoulder pain. The Board notes, however, that pain is a symptom, but not a valid diagnosis.¹⁴

Dr. Freeman provided reports diagnosing adhesive capsulitis, but offered no opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁵ For this reason, Dr. Freeman's reports are insufficient to establish appellant's claim.

In his May 11, 2017 report, Dr. Hanan opined that the March 27, 2017 employment caused bilateral shoulder derangement. Although Dr. Hanan noted that appellant had a history of a prior right shoulder injury and resultant surgery, he did not explain how removing the pizza from an oven had injured appellant's left shoulder. Furthermore, his report fails to address the effect of the preexisting right shoulder condition on appellant's current presentation. In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the claimed employment injury and the preexisting condition.¹⁶ The Board finds that Dr. Hanan's report fails to provide a rationalized opinion differentiating between the claimed March 27, 2017 employment injury and the progression of the January 31, 2013 employment injury and surgical changes. It is therefore insufficient to establish appellant's claim.¹⁷

Appellant also submitted reports signed solely by a nurse practitioner or by a physical therapist. These reports do not constitute competent medical evidence because a nurse practitioner or physical therapist is not considered a "physician" as defined under FECA.¹⁸ Under FECA the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law.¹⁹ Consequently, the medical findings and/or opinions of a nurse practitioner

¹⁴ *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *E.M.*, Docket No. 18-1599 (issued March 7, 2019).

¹⁵ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Ellen L. Noble*, 55 ECAB 530 (2004).

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See also *B.C.*, Docket No. 18-1735 (issued April 23, 2019).

¹⁷ *B.C.*, *id.*

¹⁸ *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (a nurse practitioner is not a physician under FECA); *J.L.*, Docket No. 17-1207 (issued December 8, 2017) (a physical therapist is not a physician under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

¹⁹ 5 U.S.C. § 8101(2).

or physical therapist will not suffice for purposes of establishing entitlement to compensation benefits.²⁰

Finally, appellant has submitted diagnostic imaging studies in the form of an MRI scan and x-rays in support of her claim. The Board has explained that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.²¹ These reports are therefore also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence to support her allegation that she sustained a right shoulder injury causally related to the employment incident of March 27, 2017, the Board finds that she has not met her burden of proof to establish a claim.²²

On appeal counsel contends that Dr. Hanan's May 11, 2017 report contains sufficient medical rationale to meet appellant's burden of proof to establish causal relationship. However, for the reasons set forth above, appellant has not met her burden of proof to establish her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right upper extremity injury causally related to the accepted March 27, 2017 employment incident.

²⁰ *S.J.*, *supra* note 18; *J.L.*, *supra* note 18.

²¹ *C.B.*, *supra* note 5; *see J.S.*, Docket No. 17-1039 (issued October 6, 2017).

²² *C.B.*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board